

Mondie Forge Company and Lodge No. 1073, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO and International Association of Machinists and Aerospace Workers, District 54, AFL-CIO and Cleveland Die Sinkers Lodge No. 10. Cases 8-CA-24229, 8-CA-24285

November 25, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge in Case 8-CA-24229 filed by Lodge No. 1073, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO (the Boilermakers) and a charge and amended charge in Case 8-CA-24285 filed by International Association of Machinists and Aerospace Workers, District 54, AFL-CIO and Cleveland Die Sinkers Lodge No. 10 (the Machinists), the General Counsel of the National Labor Relations Board issued a second amended consolidated complaint, compliance specification and notice of hearing against Mondie Forge Company, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges, amended charge, and the second amended consolidated complaint and compliance specification, the Respondent has failed to file an answer.¹

On October 22, 1992, the General Counsel filed a Motion for Summary Judgment. On October 27, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Pursuant to Sections 102.20, 102.21, and 102.56 of the Board's Rules and Regulations, the second amended consolidated complaint and compliance specification states that unless an answer is filed within 21 days of service, "all of the allegations in the complaint

¹ A copy of the second amended complaint and compliance specification was sent to the Respondent by certified mail and returned to the Regional Office marked "MONDIE FORGE—MOVED LEFT NO ADDRESS—UNABLE TO FORWARD—RETURN TO SENDER." The Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). Service of the various papers of the Board is accomplished by deposit in the mail to the last known address of a respondent. The Respondent's failure to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *National Automatic Sprinklers*, 307 NLRB No. 80 fn. 1 (May 8, 1992).

shall be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated September 28, 1992, notified the Respondent's attorney of record that unless an answer was received by close of business October 9, 1992, a Motion for Summary Judgment would be filed. The Respondent's attorney responded by letter of October 13, 1992, stating that he had no authorization to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an Ohio corporation, with an office and place of business in Cleveland, Ohio, has been engaged in the manufacture of rough forgings. Annually, the Respondent sells and ships goods valued in excess of \$50,000 directly to points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Boilermakers and the Machinists are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Recognition: The Boilermakers

The following employees of the Respondent constitute a unit (unit A) appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees with the exception of employees of the die department, supervisory employees having the right to hire or discharge, foremen, clerks, confidential employees and office workers.

Since at least about September 1, 1990, the Boilermakers has been the designated exclusive collective-bargaining representative of the employees in unit A and since at least then the Boilermakers has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from September 1, 1991, to August 31, 1992. At all times since at least September 1, 1990, based on Section 9(a) of the Act, the Boilermakers has been the exclusive collective-bargaining representative of the employees in unit A.

Recognition: The Machinists

The following employees of the Respondent constitute a unit (unit B) appropriate for purposes of col-

lective bargaining within the meaning of Section 9(b) of the Act:

All employees in the Die Room performing work directly involved in the manufacture and maintenance of all necessary models, dies or parts of dies used in and for the production and completion of forgings with the exception of supervisory employees, foremen, clerks, maintenance workers and office workers.

Since at least July 1, 1990, the Machinists has been the designated exclusive collective-bargaining representative of the employees in unit B and since at least then the Machinists has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement, which is effective from July 1, 1990, to June 30, 1993. At all times since at least July 1, 1990, based on Section 9(a) of the Act, the Machinists has been the exclusive collective-bargaining representative of the employees in unit B.

Failure to Honor Terms of Machinists' Agreement

On or about November 18, 1991, the Respondent unilaterally modified the terms of article 19 (hospital and surgical insurance) of its collective-bargaining agreement with the Machinists by ceasing to make the required premium payments and thereby effectively terminating all employee medical insurance benefits. The Respondent engaged in this action without appropriate notice to the Machinists under Section 8(d) of the Act and without having received the agreement of the Machinists to alter the terms of the collective-bargaining agreement. The terms and conditions of employment affected are mandatory subjects for the purpose of collective bargaining.

Termination of Operations

On or about November 19, 1991, or shortly thereafter, the Respondent terminated its manufacturing operations at its Cleveland, Ohio facility. The Respondent engaged in this action without having afforded the Boilermakers and the Machinists an opportunity to negotiate and bargain as the exclusive representatives of the Respondent's employees over the effects of the termination of manufacturing operations. The termination of its manufacturing operations relates to the wages, hours, and other terms and conditions of employment of the employees in units A and B and is a mandatory subject for the purpose of collective bargaining.

CONCLUSIONS OF LAW

1. By unilaterally modifying the terms of article 19 (hospital and surgical insurance) of its collective-bargaining agreement with the Machinists, by ceasing to make the required premium payments and thereby effectively terminating all unit B employees' medical insurance benefits, the Respondent has engaged in unfair

labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

2. By terminating its manufacturing operations at its Cleveland, Ohio facility without having afforded the Boilermakers and the Machinists an opportunity to negotiate and bargain over the effects of the termination of operations, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to make contractually required payments pursuant to article 19 of the Machinists contract, we shall order the Respondent to make whole its unit B employees by paying the amounts set forth in the compliance specification, including as requested in the compliance specification, any further expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

To remedy the Respondent's unlawful failure and refusal to bargain with the Boilermakers and the Machinists about the effects of termination of operations at its Cleveland, Ohio facility, we shall order it to bargain with the Boilermakers and the Machinists, on request, concerning the effects of that decision. Because of the Respondent's unlawful failure to bargain with the Boilermakers and the Machinists about the effects of the decision to terminate its Cleveland, Ohio operations, the unit A and unit B employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Boilermakers and the Machinists. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practice committed.

Accordingly, we deem it necessary in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to require not only that the Respondent bargain with the Boilermakers and the Machinists, on request, about the effects of the closure,

but we shall also accompany our order with a limited backpay requirement designed both to make the employees whole for losses as a result of the Respondent's failure to bargain, and to re-create in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by requiring the Respondent to pay backpay to unit A and unit B employees in a manner similar to that required in *Transmarine Corp.*, 170 NLRB 389 (1968).

The Respondent shall pay unit A and unit B employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) The date the Respondent bargains to agreement with the Boilermakers (unit A) or the Machinists (unit B) on those subjects pertaining to the effects of the plant closure on unit employees; (2) a bona fide impasse in bargaining; (3) the failure of the Boilermakers (unit A) or the Machinists (unit B) to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Boilermakers and/or the Machinists; or (4) the subsequent failure of the Boilermakers (unit A) or the Machinists (unit B) to bargain in good faith.

In no event shall the sum paid to any of these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than the amount these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Interest on all sums shall be paid in the manner prescribed in *New Horizons for the Retarded*, supra.

The compliance specification consolidated with the second amended complaint sets forth the amounts due unit A and unit B employees pursuant to the *Transmarine* remedy. The Respondent shall be ordered to pay the amounts set forth in the compliance specification, with interest to be computed on the amounts as prescribed in *New Horizons*, supra.

Finally, in view of the Respondent's closure of its facility, we shall order the Respondent to mail copies of the notice to all unit A and unit B employees.

ORDER

The National Labor Relations Board orders that the Respondent, Mondie Forge Company, Cleveland, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Failing to honor the terms of its collective-bargaining agreement with the Machinists by unilaterally modifying the terms of article 19 (hospital and surgical insurance) by ceasing to make the required premium payments and thereby effectively terminating all unit B employees' medical insurance benefits.

- (b) Failing to bargain in good faith with the Boilermakers and the Machinists by terminating its manufacturing operations at its Cleveland, Ohio facility without having afforded the Boilermakers and the Machinists an opportunity to negotiate and bargain over the effects of the termination of operations.

- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Honor the terms of its contract with the Machinists by paying unit B employees the amounts set forth next to their names in the compliance specification (part 2), which represents the amounts owed them at the time of issuance of the second amended complaint for unilateral cessation of required premium payments thereby effectively terminating all unit B employees' medical insurance benefits, plus any additional amounts accrued and with interest as described in the remedy section of this decision.

- (b) Bargain in good faith with Lodge No. 1073, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO regarding the effects of the cessation of its operations in Cleveland, Ohio, on the employees in the following appropriate unit (unit A):

All employees with the exception of employees of the die department, supervisory employees having the right to hire or discharge, foremen, clerks, confidential employees and office workers.

- (c) Bargain in good faith with International Association of Machinists and Aerospace Workers, District 54, AFL-CIO and Cleveland Die Sinkers Lodge No. 10, regarding the effects of the cessation of its operations in Cleveland, Ohio, on the employees in the following appropriate unit (unit B):

All employees in the Die Room performing work directly involved in the manufacture and maintenance of all necessary models, dies or parts of dies used in and for the production and completion of forgings with the exception of supervisory employees, foremen, clerks, maintenance workers and office workers.

- (d) Make whole its employees in unit A and unit B for its failure to bargain with their bargaining representatives regarding the cessation of its Cleveland, Ohio operations by paying them the amounts set forth

in the compliance specification (part 1) with interest as described in the remedy section of this decision.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(f) Mail to all unit A and unit B employees, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be mailed by the Respondent immediately upon receipt.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to honor the terms of our contract with International Association of Machinists and Aerospace Workers, District 54, AFL-CIO and Cleveland Die Sinkers Lodge No. 10 by failing to comply with article 19 (hospital and surgical insurance) by ceasing to make the required premium payments and thereby effectively terminating all medical insurance benefits

for employees in the following appropriate bargaining unit:

All employees in the Die Room performing work directly involved in the manufacture and maintenance of all necessary models, dies or parts of dies used in and for the production and completion of forgings with the exception of supervisory employees, foremen, clerks, maintenance workers and office workers.

WE WILL NOT fail to bargain in good faith with the Machinists or with Lodge No. 1073, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO who represent the employees in the appropriate unit below, by failing to bargain with them regarding the effects on unit employees of our cessation of operations at our Cleveland, Ohio facility:

All employees with the exception of employees of the die department, supervisory employees having the right to hire or discharge, foremen, clerks, confidential employees and office workers.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL NOT honor the terms of our contract with the Machinists and make our employees whole for our failure to honor the contract by paying employees the amount set forth next to their name in the compliance specification (part 2), with interest.

WE WILL NOT bargain in good faith with the Machinists and the Boilermakers regarding the cessation of operations at our Cleveland, Ohio facility and make unit employees whole by paying them the amounts set forth in the compliance specification (part 1), with interest.

MONDIE FORGE COMPANY